

VILLAGE OF COLD SPRING ZONING BOARD OF APPEALS  
 85 MAIN STREET, COLD SPRING NEW YORK 10516  
 PHONE (845) 265-3611  
 Joint Public Hearing

June 7, 2012

Members: Chairman; Donald Mac Donald, Greg Gunder, John Martin, Edward Murphy & Richard Turner and Village Attorney; Steve Gaba

Also present were Paul Henderson, Beth Sigler, Robert Lusardi; Attorney for Henderson and Sigler, Fred Norgaard, Susan Peehl, Andrew Hall, Camille Linson; Attorney for Peehl and Hall, Mayor Seth Gallagher, Matt Francesco; Village Trustee, Al Zgolinski; HDRB Chairman, Kathleen Foley, Bill Burjarski; Building Inspector and Charles Hustis; Village Board Trustee

D. Mac Donald opened the meeting at 7:05 P.M. and introduced the board members

**1. Frederick Norgaard, 9 Fair St.**

Regarding the building of an existing shed located in the rear yard at 14 Stone St. the applicant asked for the following:

- Interpretation of shed project extension of non-conforming 134-19
- Discretionary authority of building inspector 134-20(B)
- Determination of review board of the code 64-11(B)(2)
- Determine also whether the application is timely for village law. The property is in the R-1 zone.

**2. Susan Peehl and Andrew Hall, 13 Fair St.**

Application for the interpretation of the code regarding the rebuilding of an existing shed located in the rear yard at 14 Stone St.

- Interpretation of the shed project 134-19CDEG
- Non-conforming uses 134-30,
- Complaints of violations 134-31
- Stop work orders 133-33
- Board must also determine whether the application is timely according to Village Law.

The Board reviewed the issue of timeliness first. Chairman Mac Donald asked all parties if they objected to a joint public hearing regarding the timeliness issue. There were no objections.

Camille Linson, Attorney for Peehl and Hall – Ms. Linson redistributed a summary of items of authority previously submitted. Ms. Linson read the Village Law which requires that an appeal must be filed within 60 days of filling of any order; requirement, decision, interpretation or determination of administrative official Village Law 7-712-85B. A neighboring property owner appealing the issuance of a building permit must appeal within 60 days at which they receive actual or constructive notice, which was interpreted by Mr. Gaba, Village Attorney. Typically it had been interpreted by 60 days from when work began or 60 days from notice by neighbors. In this instance Mr. Hall and Ms. Peehl were obviously aware there was a project taking place next door. However, they did not look into the matter any further due to their having regular conversations with their neighbor, Mr. Henderson, told them they were rebuilding the

existing shed. Mr. Henderson told Ms. Peehl. The project was approved by the HDRB and that according to the building inspector, at that time, that one wall had to be replaced at a time so that the building could remain a grandfathered structure. The HDRB approved plans which noted they were to match the existing plans. Ms. Peehl and Mr. Hall's understanding of the project came from two different sources: the conversations with Mr. Henderson, who noted to Ms. Peehl, during conversations that the project was taking longer than it should since he was going wall by wall. The walls had to remain standing. Initial building permit issued by George Tomkins, Building inspector at that time, told Mr. Henderson that if he demolished the structure completely he must receive a variance from the Zoning Board of Appeals.

Ms. Peehl - noted the walls came down February 23, 2012. The new walls went up on February 24, 2012. Ms. Peehl noted that is when she started to ask questions because the walls went up higher. Ms. Peehl noted she had to foil the paperwork. At the time she saw the permits and the original application. She noted that the shed must be taken down one wall at a time but noted that is not what he did.

Mr. Gaba - asked when Ms. Peehl had the first conversation with Mr. Henderson. Ms. Peehl answered from about 2009. Mr. Henderson put the tarp on the shed sometime in 2009. Mr. Gaba asked if work was ongoing. Ms. Peehl responded that she noted to Mr. Henderson that the boards were coming off the shed. There was an okay relationship with Mr. Henderson they even talked over fence and exchanged items such as items from the garden.

Ms. Linson noted prior to February 23 and February 24<sup>th</sup> when the old walls went down and the new walls were put up on February 24, 2012 her client had several conversations with Mr. Henderson. Ms. Peehl added that Mr. Henderson told her he was rebuilding the shed and she was fine with that. She had no reason to believe he was not a man of his word. Ms. Linson noted that the notice date should be February 23, 2012 since that is when the project undertaken looked different and it was not that he was just rebuilding a shed or something other than a replacement. Ms. Peehl noted the project took a long time. Mr. Henderson noted to Ms. Peehl that the shed looked like an outhouse. Ms. Peehl noted there was a lot of digging going on. Ms. Peehl noted February 23 was the date the walls came down and that day she said to Mr. Henderson "okay now you will be putting up the new walls and they are going to be the same?" Mr. Henderson responded to her "no they are bigger" and Ms. Peehl noted she took a picture at that point to see the roofline against her tree to see how much bigger the new walls would be.

Ms. Linson noted that although Village law stipulates 60 days case law indicates that 60 day period is not to be strictly applied but rather it is the duty of the courts to construe statute reasonably so as not to deprive citizens of important rights. In this instance; because the plaintiff had no reasonable knowledge and is not reasonably chargeable with having undertaking investigations because they were relying on information through conversation with the neighbor. Ms. Linson suggest that on that facts, the standard of reasonableness must dictate and ask that the 60 period is the date that the old walls came down and the new walls went up. And within that 60 day period they have timely filed.

J. Martin - asked if the complainants had looked at the building permit in 2008 or any permit that might have followed prior to the date of February 24, 2012 (before the walls went down). Ms. Linson responded no, because they had no reason to.

Mr. Hall - noted he asked Mr. Henderson on that weekend when the walls came down if the application went before the HDRB and Mr. Henderson answered that all paperwork (certificate of Appropriateness for the approval of the project) had been mailed to him but they had not received it yet.

D. Mac Donald inquired to Mr. Zgolinski, HDRB Chairman, what were the HDRB requirements of providing notice to the public regarding matters to be heard before the HDRB?

A. Zgolinski, - noted that standard HDRB procedure had been followed in the Henderson application and that procedure has been like that for about 10-15 years. Mr. Zgolinski stated that the HDRB makes the call whether or not an application goes to public hearing. Typically the application has a spot to list neighbors. Notice is sent by mail to neighbors if there is a public hearing. D. Mac Donald asked why this shed application did not go to public hearing. A. Zgolinski responded In the case of this it was a shed ,it was in the back yard and it was decided by the Board members that a public hearing was not needed so neighbors were not noticed. The application was heard at a regular monthly meeting. The notice was listed for the regular monthly meeting under the agenda for new business and it was noted as a shed. D. Mac Donald - asked if there were any photos of the existing shed. A. Zgolinski - noted he had to go back and check.

D. Mac Donald – asked if A. Zgolinski understand there was possibly a zoning variance issue.

A. Zgolinski – answered no that is not the area of concern for the Board, they deal with aesthetics.

D. Mac Donald - clarified with Mr. Zgolinski that the HDRB'S approval had nothing to do with the building inspectors admonition on the building permit not to demolish the building in one shot but to rebuild it piece meal. A. Zgolinski agreed that they just address the HDRB standards regarding the shed application.

Ms. Camille Linson asked the following questions:

1. Was it a requirement imposed on Mr. Henderson to leave the walls in place?
2. Where did her clients understanding come from that that was going on?

Ms. Linson – noted the Issue is; did her clients reasonably believe that what was taking place was a mere restoration or reconstruction of an existing structure or should they be chargeable with having gone to investigate through public record to see if the project was bigger than they expected it to be or something other than Mr. Henderson suggested it to be? Her opinion is that based on the conversations her clients had with Mr. Henderson her clients are not chargeable with an obligation to delve into the public record when the neighbor continues to tell them they are fixing up the shed. It is only on February 23, 2012 that it was a wider scope other than a mere restoration of the existing structure and was not what they believed it was to be.

A. Zgolinski - noted the HDRB holds public hearings when they believe the project will be a significant change.

Ms. Linson - noted that the spirit of the 60 day notice would be to say you know as neighbors you've got a right to speak and that doesn't go on forever and people have to go on with their lives with some security and if someone is going to take on a project neighbors need to be expeditious. In this instance she is asking what would expeditious mean on these facts? When does the 60 day period begin, prior to February 23, 2012? Ms. Peehl and Mr. Hall had no reason to believe the project was anything but a

reconstruction. Ms. Linson suggests the 60 day period begin on February 23, 2012 when the building came down.

A. Zgolinski - noted that the Board understood that the shed was coming down and the Board did note it was a significant change but it was in the back yard and the Board is usually concerned about a structure in the public right of way.

Ms. Linson - noted that there may have been other avenues for her clients to learn that the project was more significant than what they believed. It is really what the clients should have known and did know. They had no reason to be expected to delve into the public record. They relied on the conversation with the neighbor, and only on February 23, 2012 when the building came down did they have reason to believe the project was going to be bigger than the original structure. The work had been covered with a tarp during construction.

D. Mac Donald noted that the Board has to determine whether what Ms. Linson and her clients are claiming actually took place and they also have to decide when the 60 day notice began.

Ms. Linson - noted it is up to the Board to decide since both sides have different time lines when project construction happened. The second argument is that a variance was required and leaving the permit aside Mr. Henderson did not fulfill his obligation with respect to the permit because the non-conforming structure that was grandfathered in was completely taken down to the ground and it was stated by Mr. Tompkins not to demolish, else it would have to go back to the Board, and the Village Code states that when a structure is damaged by fire or other causes by more than 75%, then it shall be repaired or rebuilt only in conformity with the village code. On February 23, 2012, when the structure was completely taken down that kicked in section 134-19 of the Village Code and Mr. Henderson and Ms. Sigler had the obligation at that time to return to the Village and request a variance.

D. Mac Donald noted that is contrary to what was told by the Building inspector which noted if you removed the wall one at a time no variance is required. Ms. Linson noted that one wall at a time is meant for a repair and preservation of old building not rebuilding a new building.

Mr. Gaba – noted that the gist of the email dated March 25, 2012, which the applicants received from the current Building inspector, Bill Burjarski, stated he refused to take action. Mr. Gaba asked Ms. Linson if her clients submitted some kind of written objection to the building inspector such as a code violation or if they had taken other action.

Ms. Linson – noted she would first like to distinguish the objection regarding the issuance of a building permit from their other objection concerning the as built construction. Ms. Linson noted there was an exchange of email between her clients and the building inspector regarding both issues.

Mr. Gaba - asked Ms. Linson if the emails have been submitted. Ms. Linson responded yes. Mr. Gaba asked for another copy of those emails.

Ms. Peehl - noted she asked what she should submit regarding emails. Mr. Gaba – responded that being submitted will be the email from the building inspector dated March 25, 2012, referral to the building

inspector, denial from building Inspector dated April 4, 2012. A copy of all the emails should be sent to all Board members as well.

Mr. Gaba - read an email from the building inspector noting an application requesting compliance with the Cold Spring Zoning Code and applicable building approval processes for the shed at 14 Stone St. Mr. Gaba asked if the applicable building process would mean the 2008 building permit.

Ms. Linson - responded it is based on the approval that when they took down the building that they would have been required to come back and apply for approval based on the fact that a zoning variance would have been required.

Mr. Gaba - noted Peehl/Hall are not appealing from the 2008 building permit. Ms. Linson responded the application is two-fold, appealing firstly regarding the validity of the building permit and permit renewals. Secondly, appealing the building inspector's decision to not take action himself and instead to refer her clients to the ZBA in connection with the new structure going up without as her clients have alleged having a valid permit. Was the initial permit and subsequent renewal valid and forceful, and did Mr. Henderson rely on them appropriately? But if they were all fine, did Mr. Henderson disqualify himself from relying on any of those because the structure was taken down completely at which point he would be required to get variances from the ZBA? Mr. Gaba - clarified by noting that one would be the decision by email from the building inspector and the other would be the 2008 permit and the extension permit. Ms. Linson responded correct.

D. Mac Donald - noted that what Ms. Linson is saying is that there are two standards: (1) the 60 day standard taken generally when the construction started and (2) when a party seeks revocation of a building permit issued to another. The 60 days starts when the party receives notice of the objection. If the building permit is outstanding and the building is not done, if somebody objects to that building permit and the 60 day period starts when that objector registered the complaint with the building inspector and he declines to take it and that standard is separate and apart from the first one.

Ms. Linson - answered correct and that second standard she would argue should be applied with respect to the argument that a variance should have been obtained once the shed was completely taken down. D. Mac Donald - noted that there was a period of time when no walls of the original structure existed, the walls did not exist. Ms. Linson - answered correct, that is the argument. Ms. Peehl - added no roof either.

D. Mac Donald opened the meeting for Board member comments and questions.

J. Martin - noted that looking at the 60 days you are looking at two different aspects. One is a variance based on February 24<sup>th</sup> demolishing, as per the Peehl/Hall argument and second is the Peehl /Hall argument that the new construction required variances. Ms. Linson - noted the other alternative is that Peehl/Hall had actual notice of the need for variances when the framing commenced on February 24, 2012. D. Mac Donald - asked if the 60 days, according to Ms. Linson is that, when her clients became aware that the shed was going to be larger than the original. Ms. Linson - responded yes.

Mr. Norgaard – referenced to cases cited in his letter regarding timeliness. Mr. Norgaard distributed a packet which contained two letters as examples referencing to timeliness from appellate courts (cases

concerning Oyster Bay Cove Village and the City of Utica). He Thanked members of the board and proceeded by reading a letter from Amy Zamenick with the office Drake Loeb Heller Kennedy Gogerty Gaba and Rodd PLLC.

Mr. Norgaard read a prepared statement, as follows:

"My right to bring my appeal before this board has been challenged by the attorneys for the village in the letter from Amy Zamenick. She says that our appeals are beyond the 60 day limit of having received active or constructive notice of the building permit.

The letter cites two cases as precedent, and I have copies of both if anyone wants to follow along. In both cases the claims of "untimely appeal" were rejected by the courts. The reasons were different, but in both cases the reasons support our right to appeal.

In one case, *Iacone v. Building Department of Oyster Bay Cove*, the court ruled that the appeal was timely but rejected the applicants because they "failed to exhaust their administrative remedies as to that permit". Well, that's exactly why I am here, to pursue an administrative remedy.

In the other case, *Farina v. Zoning Board of New Rochelle*, the court draws the clear distinction between how the 60-day law applies to someone who is denied a building permit and how it applies to a neighbor who becomes aware of a building permit and how it is being used.

The court states "It is settled law... that where a party seeks revocation of a building permit issued to another, the prescriptive period should be computed from the date such party received notice that his objection to a permit had been overruled." The court cites the case of *Pansa vs. Damiano* as precedent.

In that case, the court was even more explicit and I quote:

"The whole of the position of the city officials as to the timeliness issue is that the zoning ordinance at the point where it calls for an appeals to be taken " within thirty (30) days of the date of the decision" means within 30 days from the issuance of the permit. Such a construction or application might in some fact situations be permissible but on these facts it is unreasonable and undesirable. Strictly applied, it might prevent any appeal at all since the neighbors might not learn till long afterward of the issuance of a building permit. As applied to an applicant denied a permit the proposed construction might be fair and sensible. But one who demands revocation of a permit issued to another is in no position to appeal or at least should not be required to take his appeal until his demand for revocation has been rejected with some formality and finality. It is the duty of the courts to construe statutes reasonable and so as not to deprive citizens of important rights. In performance of that duty we read section 3 of article 13 of the zoning ordinance as meaning that the prescribed 30 days does not begin to run against one who seeks revocation of a permit until his objections have been overruled in a 'decision' of which he has notice.

In our case the 'decision' overruling my objections would be the Building Inspector's referral to this board on April 4<sup>th</sup> of this year. My appeal was filed May 1. "

Mr. Norgaard said on the evening of Friday February 24, 2012 he saw for the first time the skeleton frame of the lower parts of the shed and he was more than surprised since he was told that his

neighbors were only going to replace the old shed. On the next business day Monday February 27, 2012 he wrote one of several emails to the building inspector and the village board outlining his objections and asked them to put a stop work order on the shed construction. This presupposes the putting forward of the objections in proper form and within a reasonable time and without laches. He added that no such questions are in this case. Mr. Norgaard also noted he let less than 6 hours go by before he registered his appeal.

D. Mac Donald asked if the Board member questions for Mr. Norgaard and the Board said no.

Robert Lusardi, a Carmel NY, Attorney, representing Henderson/Sigler, noted that he heard some very creative arguments and the arguments were absolutely worthless. The laws are clear like the old minds of the people that are given them. The law is pretty clear, it is village law section 134-7-712(A)5(B) it says that an appeal can't be made after 60 days from the filing of any order, requirement or decision with the board of appeals. The Administrative official from whom the appeal was taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action was forth taken. Mr. Lusardi noted that did not happen. Mr. Lusardi referred to a case noted as Palm Management Corporation vs. Goldstein 218 3<sup>rd</sup> 337 which states that appeals taken from the new building permit relate back to original building permit. That would apply to any number of the issues raised as well. What had been admitted to is, there was notice of a building permit, certainly back in 2009, and thereafter and submitted that of witnesses would attest that the construction went on for some time. The neighbors knew and admitted to you that they knew that a permit had been issued and what they are trying to argue and is an argument that has absolutely no merit. That is unless they knew all the details of what was going to be built there under the permit which the time doesn't start until they knew. That is not the law, so for example: "let's say someone says well I knew you were building a house but I didn't think you were building a porch on the house. If I had known you were building a porch on the house, I would have objected." The law says and in fact the cases cited by Ms. Linson both say that the time clock starts at the time you were aware of construction based on a permit for years. There is no basis to say clock starts at any other time such as receiving full details of project. That law does not exist except in their minds, no place else. Mr. Lusardi also noted that he read 7-712(A) and doesn't know where the argument about four walls comes in and quite frankly does not understand it. There is nothing in zoning law that requires walls to remain up on a structure but, walls did remain up during the construction and framing out of the foundation and the building was suspended right where it existed. Every effort was made to maintain the original structure during the construction process. All the law says is that you can't rebuild the structure beyond a certain value of the structure and the land and that clearly is not the case here. It is well within those parameters.

D. Mac Donald - asked if he is saying the whole property including the house or is the code saying just the existing shed.

Mr. Lusardi - noted the structure and the land. The land itself is \$100,000 or whatever it may be. You take the value of the shed with that. So, my client did what the law permitted. The argument that some new clock starts during the course of that, in his opinion is unfounded also noted there is no height restriction on rebuilding a non-conforming structure nowhere that he can see it in the zoning law. The law also requires, and that they all agree on, is that the application must be filed timely. The only argument he heard is from Ms. Peehl was that it was taller than the old building used to be.

D. Mac Donald - asked when you make something taller and add more volume to height that is not enlarging. Enlarging is only when you go horizontally? Is that what you are saying the code says? Mr. Lusardi answered you cannot enlarge a non-conforming use. If you stay within those perimeters then the stature applies. Once again perhaps Mr. Lusardi noted he went a little farther than he needed to go regarding the merits. The only complaint Mr. Lusardi noted, the only thing he heard is regarding the height. That is the only thing they are complaining about that they did not already know about beforehand. Now they claim that Mr. Lusardi's clients mislead them and doesn't know what word they are trying to get at but all's he heard is Mr. Henderson said he is rebuilding a shed. There was nothing that was said as to size dimension or anything like that. He didn't say he was rebuilding the shed to the exact height and dimension of the existing shed, he never said that. If they interpreted that to mean they are building the same shed. A stop work order is not in their favor and he did not know of any case law that says that. The fact that, if they looked at the site plan and the HDRB plans show the same thing, it is not the same. It was never said by his client it was going to be the same and if they cared to look at drawings that would have demonstrated that for them. So Mr. Lusardi submits that the 60 day rule is proposed for homeowners who build on their property and spend substantial amount of money to build on their property. The rule protects them against claims that what they are building is illegal. It's designed by the statute for that purpose. So his clients are entitled to rely upon the advice they received by the building inspector that they were doing what they were told. A stop the project is not in order.

D. Mac Donald - asked Mr. Lusardi to talk about the section 134-30 argument raised by Peehl/Hall and Norgaard. Mr. Lusardi noted he was not aware of that law.

D. Mac Donald questioned Mr. Lusardi as to his interpretation of Farina vs. Zoning Board of Appeals City of New Rochelle.

Mr. Lusardi noted that there has never been an appeal through Zoning Board of Appeal within the time period. Mr. Lusardi did not see where the complaint to the building inspector stops the clock and noted he disagreed with the law.

R. Turner - noted the applicant cannot take an issue to ZBA unless they get a denial from the building inspector first. Mr. Lusardi - noted they could have made an appeal from the building permit. R. Turner - noted alright the one that was issued. R. Turner - asked what if the building permit was issued in error. Mr. Lusardi noted he did not say it was issued in error but they had every right to appeal, and that is what the statute says they had every right to appeal from the permit. They don't have to do anything other than file an appeal.

R. Turner - asked what ordinary person would think when somebody says I am going to replace a wall that they would expect the wall to be the same size and height, which in law you deal with the ordinary people, they make decisions, that is what the law says. Now, would an ordinary person assume that if I said, I'm going to replace the shed that it would be in like height and size regardless what it says in the statute? That's what an ordinary person would ordinarily rely on unless you or somebody gave them information they can rely on prior to that and why didn't your client show the applicants diagrams of what he was going to put up. Mr. Lusardi noted if somebody said I'm going to rebuild something I certainly wouldn't think it would be exactly the same thing as what was there before. Mr. Lusardi noted he did not think you can find the commonality and the misrepresentation is an entirely different thing. If someone said I'm going to build exactly what was there before then he might go along with what you were saying.



Ms. Linson asked to interject because Mr. Lusardi with respect is imputing meaning of her words; at no point in time, she did not say Mr. Henderson willfully mislead her client. She said based on his words, her client had a certain belief.

D. Mac Donald noted her client thought the meaning of rebuild was different than what...

Ms. Linson - interjected by noting she believed Mr. Lusardi was misconstruing the meaning of her words. For instance she stated that at no point in time did she say Mr. Henderson had willfully mislead her clients. R. Turner - noted he just did not understand why Mr. Lusardi's clients did not say this is what I am building and show the applicants the drawings. There is no secrecy in other words. Mr. Lusardi noted when they asked Mr. Henderson are you going any higher he indirectly said yes. Mr. Lusardi noted that now what they are talking about is when the clock starts on the statute of limitations and even though the clock ticked out long before a complaint was filed. Now they are trying to argue that even though they knew a permit was issued and even though they knew work had started you were justified in not filing an appeal because of something that Mr. Henderson said. What Mr. Lusardi noted is that Mr. Henderson said they were building a shed in accordance with what was authorized in the building permit.

G. Gunder - asked when noticeable work started, prior to the framing. Mr. Lusardi noted heavy construction took place in 201 to early 2012. It is obvious that a significant amount of construction took place, and client has photos to show, long before January. Mr. Lusardi stated that the law says that the 60 days starts from date of building permit issued or when construction starts. And if for some reason there is no basis for knowing that a permit has been filed from the date you had actual notice that a permit was issued or constructive notice. Actual notice would be if no construction was going on and somebody said something regarding a permit has been issued. Constructive notice is being perceived something in the ground happens to let you know something is being done.

J. Martin - asked relating to the plans, whether the shed's measurements were on file with the building department or with the HDRB at the time the building permit was initially issued. Mr. Lusardi answered yes to both. Ms. Linson stated that to her knowledge that there were no plans submitted specific to the building application. She added that the application submitted included the earlier submission to the HDRB rather than the building permit application (included in earlier drawings submitted to the HDRB), and those submissions had certain flaws. J. Martin - asked if the plans that were filed showed dimensions on them. Ms. Linson noted she will show what she has.

Mr. Lusardi - asked that his client respond to that question.

Mr. Henderson - noted there were no differences in the drawings to the HDRB and the building department. And as far as they understood what was called out on the drawings was sufficient.

J. Martin- asked if that was in the record and Mr. Henderson answered yes.

D. Mac Donald - noted there was no date on the application itself but it was noted the check was issued September 11, 2008 date on drawings submitted August 2008.

Ms. Linson - noted the drawings submitted were the same drawings submitted for the Certificate of Appropriateness and to that by their nature of degree they lack the specificity that one might expect in

construction drawings which is reference to the Village Code. D. Mac Donald - noted he saw two drawings construction drawings for a shed with some dimensions but never saw a site plan. But for whatever reason the building inspector accepted it and issued a building permit on it.

Mr. Henderson - noted as required he submitted three copies of a survey. D. Mac Donald - noted the survey showed existing conditions of the property and did not superimpose the proposed shed. Mr. Henderson – added, nor did it show a section of the house that was removed. That section was a non-conforming section of the house that was removed.

Mr. Henderson - noted that, because it was such an important part of the argument he would like to say that he would regrettably inform you that the vision they had in their minds of the shed from the time it went to the HDRB and the building department was no different than what you see on those drawings and at any point if he felt they expected the new shed to look exactly like the one that stood there he would have gladly offered to show them the drawings. And he wants to point out as his lawyer points out they could have availed themselves at any time to go to one of three places to get those drawings. So it was a shock to him when they came up to him and said they were shocked at what he was doing. Mr. Henderson then read a letter from a neighbor who lives directly behind them.

“My name is Jack Meyers, and my partner Mathew Robbins and I live directly across from the rear property line on which the contested shed is being constructed. I find it unfortunate that this seemingly noxious structure has caused such strife between neighbors. Well I truly respect them to have taken into consideration the arguments made by all parties I still believe that the structure was planned, constructed according to village guide lines and is a considerable improvement over the previous shed. In many ways certainly in terms of our property line and the square footage, we are the affected by the construction, so I'm anxious to see it completed, as the back line of my property is directly where the original line stood. I witness the inglorious process Mr. Henderson undertook in order to meet the guidelines set forth by the village including building and support systems so to keep all four walls in place while removing the lower structure so he could excavate the original foundation that was buried under years of accumulated soil. Between our property lines there was almost a two foot drop where the original shed was actually holding up the soil on my side requiring the foundation to be built up to compensate for the grade differences. And while the overall new structure is taller in stature than the original a great deal of this height is due to the foundation requirement.

(Mr. Henderson added he just wanted to note that the foundation is in those drawings and it shows the depth condition of Mr. Meyer's property.)

During the excavation I have to admit, I was getting impatient of the process. I recall early last spring when my neighbor Sue Peehl and I asked Mr. Henderson why it was taking so long and he explained that the procedure required by the village how the walls had to remain intact so the footprint wouldn't vary. How it meant buildings and forth excavating etc. I was able to view the construction site throughout the process and saw the excavation, pouring the foundation, remained far more complicated during the unusual process so I decided from there that I would have patience with this process and gave Mr. Henderson permission to enter onto our property during the build. I didn't feel then nor do I feel now that Mr. Henderson was trying to pull one over on me or be deceptive. From my understanding he did exactly what he was supposed to do in gathering permits and village approval. So while I can understand the concerns put forth by my neighbors concerning village code and certainly feel that the process of approving these projects need reform. I don't think this project needs to be sent back to the drawing board at the expense of the village or my neighbor. personally I don't see how

shaving off the height will make any difference in mine or my neighbors quality of life for there is no notable view to obscure nor is it blocking any sunlight that wasn't already obscured by the foliage. In my opinion it is thoughtfully designed and works with the village esthetics.

What is going to directly affect my quality of life is seeing construction held up with red tape for goodness knows how long. As new plans are made, considered and approved and the current structure is demolished and rebuilt I will have to look directly at this unfortunate scene the entire width of my back lot every day through all of this. I just want to enjoy my garden, which I have labored over extensively, but this situation has not only affected my enjoyment of that space it has put us all at risk I simply don't think that a shed is worth all that stress animosity and legal favor rattling involved. At this point, all it seems to be accomplishing is pitting neighbor against neighbor and I ask again is this worth it. So as it pains me to take sides, I am left with no choice as I am literally stuck in the middle of this. I look forward to putting all this behind and moving on I think once the shed is complete and everyone has a moment to live with it resentment will fade and it will just be another part of the village.

Sincerely,

Jack Myers"

Mr. Henderson noted he did not make multiple copies but will get copies if need be.

Mr. Gaba - asked Mr. Henderson if anyone ever asked to see a copy of the plans. Mr. Henderson responded no. Mr. Gaba asked Mr. Henderson whether between February 23, 2012 and April 16 (the earlier of the two appeal s) was any work done on the shed? Mr. Henderson - responded absolutely, Mr. Gaba asked - what kind of work? Mr. Henderson - responded he continued building the shed because they did not have a stop work order. There was a stop work order that was issued but via email by the building inspector it was then rescinded so they continued. The framing had been finished from the original parameters and put on the roof rafters and put on the sheathing and called for a building inspection on May 9, 2012. Mr. Gaba - noted he just wants to know what work was done up to April 16 that's all and asked from the time they found out or they claimed they found out that the shed was going to be more than the old shed and they actually appealed to the ZBA you did what? Mr. Henderson responded - It would have been the rafters, the sheathing in the walls, the sheathing of the roof and after that I cut and purchased the trim boards and painted those, and they are ready to go up. Mr. Gaba - thank you.

Ms. Linson - are they were still talking about the 60 days? Mr. Gaba responded - yes.

Ms. Sigler - noted during the meeting they learned from the Peehl/Hall ZBA appeal that Peehl/Hall alleged that from Dec 2009 until Feb 23, 2012 that the shed was concealed by a large tarp to obstruct neighbor's view so size and nature of construction was not visible. Ms. Sigler presented a photo taken during hurricane Irene showing extent of tarp originally, it only covered the roof, and the sides of the shed were only visible to the neighbors. Ms. Linson inquired where was the picture taken from? D. Mac Donald - responded from their back yard and noted that the blue tarp is over existing roof of the original shed and then there is a lower roof portion of the shed as well. Those that we see are the remnant of the existing walls of the shed going down to the existing foundation? Mr. Henderson responded - no, these are cut off

Mr. Henderson - showing foundation with existing foundation in place so the building inspector could see it conformed and that is why it was suspended and this was taken January 29. Ms. Sigler - noted construction was visible by both neighbors can see the foundation is 8 inches above grade.

Mr. Henderson - noted February 4<sup>th</sup> and February 5<sup>th</sup>, 2012 continued to frame the floor underneath but again the shed is still visible after footing and foundation inspection.

J martin – asked how they know the dates of these photos. Mr. Henderson – responded the camera tells them. Ms. Sigler – added they record their work. Mr. Henderson – added they started taking photos because the project started to get interesting and because the kids were really excited about it so they started documenting the process. The last photograph was February 19<sup>th</sup> before shed came down and floor structure is complete and the shed completely sheathed. The structure was still held up around it and you can see again this is their view. Ms. Sigler – added she wanted to make clear what they were doing was not obscuring the work from anybody's view which was what they are being accused of.

R. Turner – asked building inspector if he observed the work during that time frame. Bill Burjarski - responded that he keeps an inspection log and the foundation was inspected. He noted that he gave the board a copy of inspection log, which showed that his assistant building inspector inspected foundation on 9/9/ 11 and the foundation backfill was 1/27/12.

Ms. Linson showed a picture of a view from her client's yard and reiterated that the point is not that Mr. Henderson and Ms. Sigler erected the tarp to obstruct the work but the effect of the tarp from the perspective of looking from the deck of Mr. Hall and Ms. Peehl they could not see what was going on and due to the foliage at that time you do not see it. D. Mac Donald – noted that from looking at the picture that the tarp is just covering the roof whose structure was suspended over the building's foundation.

Ms. Linson – responded it really wasn't until the building went down completely and the new walls went up that they were able to tell that there was any change in dimension. Mr. Henderson and Ms. Sigler noted that is not true.

D. Mac Donald noted - that the timeline portion of the public hearing was completed on both sides.

Mr. Norgaard - noted he wanted to rebut Mr. Lusardi when he said he disagreed with the law now that may be but, it is an odd thing for a lawyer to say. That is the law of the state. Mr. Norgaard asked if he disagreed with the decisions read to you from the appellate division from the New York Supreme Court, Mr. Norgaard noted he would personally go with their ruling of the law.

D. Mac Donald – noted Mr. Norgaard was getting to the 134-30 argument; the neighbor objected to the building permit, the building inspector denied the objection and, at the time Were you stating that the clock starts ticking? Mr. Gaba – he does not raise that argument. He does not appeal from that determination. Mr. Norgaard appeals from the Oct 1, 2008 building permit but not the argument from Peehl and Hall (the later version). D. Mac Donald noted he gets that they gave constructive notice in 60 days and thought he was addressing the second alternative argument. Mr. Gaba - noted he can go and may respond to it but hope to keep it reined in but case law is the case law. The issue has to be raised to the facts.

Ms. Linson – responded the law and the interpretation of the law by court cases read this evening is to give some certainty to home owners when they undertake construction so that they are secure after a certain period that neighbors and other parties don't have a chance to object and that is in competition

with the interest of third parties to participate and have a voice in the municipal processes. Relevant to approving construction within the village, case law indicates that the 60 day period is to give that certainty and ability to home owners. It is not to be strictly applied so when reasonable notice is given to the third party they are not surprised. In this instance they are saying that on the facts Ms. Peehl and Mr. Hall could not reasonably have been expected to delve into the public record. They didn't receive letters in the mail by the HDRB and then the walls went up. It was the first time they knew what the scope of this project would be. They diligently reached out to Mr. Burjarski and commenced proceedings the intent of the law dictates they should be given a voice.

Chairman Mac Donald opened the meeting for public comment to the timeliness issue.

Matt Francisco, Village Trustee, in referring to the 60 day notice you really could lose rule of law if one says they didn't fully comprehend an application. You can't start the clock. In that case you can start the clock anywhere. He noted he can hear they are being asked to start the clock when the applicant said the walls fell. He thinks clearly it seems the intent of the law is if you have concern within that 60 days go and pull the plans. Nobody is hiding the plans even if you misunderstand what your neighbor tells you whether or not it is intentional or unintentional that's not enough reason to delay the project otherwise it will seem like the Village has no rule. You can take 60 days from any date and say you didn't comprehend it. Thinks in many ways it becomes a free for all.

Mr. Norgaard – noted from his yard he could see no work on the shed until November of last year. So it's 3 1/2 years past the permit and in his point of view nothing was going on. He had no reason to go and express any interest in anything and in Nov. 2011. He noticed the foundation being built and he assumed it was the long awaited replacement that is indeed what was going to happen. In fact that is what the building permit says; (rebuilding existing shed). So he had no reason until he saw the skeletal framing was going up; he then immediately gave an objection, Mr. Norgaard stated that the cases cited by Mr. Gaba's law firm actually supported his position. D. Mac Donald – stopped Mr. Norgaard because that was the second option. If you start the clock ticking from the time Mr. Norgaard said the project started, November 2011, 60 days would be January and he asked Mr. Norgaard if he missed that 60 day period. Mr. Norgaard – responded he did not have constructive notice.

Samuel Seward, 120 Lane Gate Road – noted he certainly would concur with the notion that if you can't clearly define when a clock should start then I don't know how anything in life will get done. The reason he wanted to be here tonight is because he jogs past Mr. Henderson's house all the time in the morning and he has been aware that they were doing something in the back yard for a number of years now. So this idea that since you couldn't see it from the yard just raises the question to me that of course you see they are working.

Douglas Price-, 16 Stone St. - noted he had been Paul and Beth's neighbor for couple years now and he has been doing the work for that long.

Julie Corbett, 109 E. Mountain Rd South - as a homeowner who has gone to the process of adding an addition to her house she has conformed to a building inspector's expectations to meet a deadline had missed deadlines because other things happened in life and had to renew and they conformed to that and it was because of this effort as a good neighbor to conform to an umbrella process by our community that provides a majority of comfort and comfort to everyone that people are conforming to

something that is acceptable. To be approved given your submission of your survey which has the dimensions of your property and how far your building is away from the property line and the dimensions of the new build out and the time line of having a building inspector come out at several time to make sure you are complying. The whole system is set to make everyone happy and knowledgeable. There is compliance with safety and everyone should get along. R. Turner - asked Ms. Corbett if she built that addition in the village and if she was a resident in the village and asked if a variance was needed for the addition. Mr. Corbett - responded she does not live in town but is a Philipstown resident and yes, a variance was needed.

Nick Pomolchuk, 26 Forman Rd – noted going by size of footprint spent a day crawling on his belly, underneath the structure that was jacked because of the way the structure had to be jacked up in order to maintain the original footprint pouring sections of the foundation by hand with 5 gallon buckets of cement to pour it where it needed to be in order to maintain and see footprint did not change.

Lauren Daisley, 18 Stone St. – noted her and her husband moved to town in July 2009. Two houses down from Sigler/Henderson and work was being done on the shed so a lot was visible from the sidewalk and since then she has seen them working every weekend and sees the kids out there. The work is very visible. Ms. Daisley noted, moreover, that for objectors to construction pursuant to valid building permits complaining years after the issuance of such building permits should not be entertained, as they are untimely and prejudicial to the financial investment of the permit holders.

Kathleen Foley, Member HDRB - during the process she was not a member of the HDRB and is not speaking as a member of that board but asked if it had there been established at any point that they are not in compliance with the approval of the structure and is there a non-compliance issue. If there is not a non-compliance issue then this process has become abusive to the applicant who has met the requirements that they have fulfilled by law.

Erika Wood, 10 Garden St. – there are a lot of people who only live here on weekends and what if that person said I did not see it. She noted she felt like you can't start a date by a person's personal awareness. People in the village live in really close proximity to each other and have to accept that everybody is not going to have a say over what neighbors are going to do. You asked what a regular person would say; she noted she feels she is a regular person. She remembers talking to Ms. Sigler and Ms. Sigler noted things were falling off and nobody would rebuild that. When things are painted they look smaller.

Tim Hynes, 15 Fair St. – Commended the Henderson's for the many, many years of working on their house. He noted he knows that house and none of these people in the room know it because they weren't in the village. He noted that Mr. Henderson did a great job on the house he knows the rules and the regulations. The Chairman from the HDRB was present at the meeting, Mr. Henderson worked well with the HDRB did a beautiful job on the house. When he saw what happened in the yard at 14 Stone St., he blamed the system and noted that not too long ago but in my personal opinion. He went through this and felt was railroaded "but that's my personal opinion". Regarding the shed he noted he sees a plan there and doesn't know if it's a legal document or if that is what it is supposed to look like, and there are other plans on your desk. If the shed was supposed to look like what is there it doesn't. The shed is huge; It is bigger than his two car garage. Mr. Hynes also noted that all he would have to do, and not being facetious, is to put a cross on it and it will be a grand church. Homework wasn't done, you

had legalities tonight and he's not against the Henderson's and not against the Peehl's. Between the attorneys, they have loopholes and he is saying right now somebody has to do something because it's getting out of control. Mr. Hynes noted he didn't want to hear this is a friendly village, "welcome to Cold Spring". It's out of control, there are loopholes and you have people here that are not satisfied and again something has to be done.

Peter Medonis, Main St. - noted he used to rent the 2<sup>nd</sup> floor of house, currently owned by Henderson/Sigler he was there for ten years and had known Paul a long time. He has seen process of construction and knows that Paul had been working on the shed for a number of years. D. Mac Donald - asked if it was more than two years and asked him if he had constructive notice before 2010 not later than 2010. Mr. Medonis answered no, not later.

Susan Peehl - noted she wanted to say that I pride myself in telling the truth and she got that from my stepfather and she doesn't lie. So when she tells things that have happened she's not making it up and what happened was they were happy that Henderson/Sigler were rebuilding the shed, and thought it was a good idea. They would tell Mr. Henderson the boards were falling off when he couldn't see them. They were neighborly. Ms. Peehl noted she liked them. She talked to them on the street whenever she saw them. She had no reason to disbelieve what Mr. Henderson presented to them, which was just rebuilding the shed and yet the shed now is much bigger. D. Mac Donald - asked isn't that the next stage and asked that it be saved for another time. Ms. Peehl - responded that other people in the audience have commented on that and so she felt she should too. When there is talk about footprint as a lay person thinks about footprint, the walls were six feet in on the side from where the walls are now and what she understood from later documentation is that the footprint is the roof line and where Paul has built the new walls, is at the roof line. Now the new roof lines are further out than the old roof line, and it is much taller. Mr. Henderson added a structure underneath at least 8 inches. She saw was Mr. Henderson digging he has been digging since he moved there. She noted they have an incredible garden. She'd seen him digging in his garden since he moved there. At one point she thought he was digging an irrigation ditch from the house to the shed and didn't know what he was doing but didn't think it would affect them until the walls went up higher and obstructed their view. It made that corner very dark and that is when she said "oh what's this" and nowhere in the plans does it talk about foundation or an inspection for a foundation that was only put in later. The original building permit is talking about framing of a shed not a foundation, when the framing when up is when they started to notice things and that is when she started to complain. D. Mac Donald - asked Ms. Peehl if that is when she is saying constructive notice took place.

Mr. Henderson added he just wanted to reiterate that the reason for maintaining the structure and foundation simultaneously was to insure that the foundation conformed to the structure. He objected to Ms. Peehl's statement that he extended it beyond what was approved. That was not true and he noted he showed photographs before. Ms. Peehl noted she had pictures also.

Mayor Gallagher - Spoke as a citizen and he noted knows both parties and knows they are both honest. He Didn't want to talk about the size and the shape and that what it comes down to is the date of notice. You have to look at something concrete, and he thought that in this case, it would be when construction was observed on the out building. He suggested that is when the foundation was being dug and certainly when the foundation was being poured. It's fairly clear that there was substantial construction activity going on there. There was even notice/ recognition that the foundation was

actually being dug and there was a lot of work being done. Mayor Gallagher noted he didn't think that the Henderson's would deliberately try to hide something and, in fact, he opined that the old shed was an eyesore for the neighbors. It sounds like, and being in the area he noted, he has been aware for years that they have been working on the shed and following through with the building inspector and trying to do the process themselves the way a lot of other people have done.

Mr. Norgaard - asked to make one more comment. He noted he saw the foundations being poured he did not worry so much about the nature of the construction that was about to take place because he assumed and rightfully so that if the building was to be enlarged there would have been a public hearing. He would have been sent a certified letter inviting him as an abutting property owner, that the building would have been required to get a variance. He thought the construction was still on the back burner so he had no reason to assume anything except, as it says on the building permit which is, rebuilding the existing structure. Not a new and different structure. My first knowledge of what was to come was February 21, 2012.

Mr. Hall -noted the context is pretty important to take note of. They were working on the assumption that this shed was being replaced. If they had known at any other point that it was going to be a substantially larger structure then of course they may have delved further into what was going on. From comments of all of the people present that have been surprised by this project not one single one of them having seen the construction going on raised any sort of a question of what was going on so he noted he was working on the same assumption. He had no cause to think that something beyond a replacement shed was going to happen in that location. Only at the point when the slab was revealed, did he begin to think something more than what met the eye was going on at that particular time.

D. Mac Donald - noted the Board understands that, and overall though the board would get it done in one night. They will close the public hearing. Go to executive session with the Village Attorney.

Mr. Gaba - Noted that it would be "closed session".

D. Mac Donald noted the Board is here to listen, to decide the timeliness issue and potentially the rest of the issues could go away. The board would like to close the public hearing tonight and move on to decide what they are going to do.

Mr. Lusardi - noted it's been a long night and it is difficult to try to continue in one night. But appreciates what the Chairman is saying. D. Mac Donald - noted it is a timeliness issue for the Henderson's since they want to keep building. It's a timeliness issue for the applicants, they want decisions. D. Mac Donald - noted to Mr. Lusardi the Board did not want to put him in a position where he felt undermined.

Mr. Lusardi - noted he did not feel he was being undermined he just felt that the appropriate way would be a two-step process and have to come back another night because they will be there for a long time and noted he was in the middle of a trial right now and it would be hard to stay until midnight but he would if need be.

Mr. Gaba suggested to pick up the other issue another night and then decide after that. Mr. Gaba suggested an executive session on the timeliness issue following the close of this meeting.



R. Turner- noted of the timeliness issue if it was decided that they didn't meet the 60 day timeliness issue doesn't that kill the whole case. Mr. Gaba – responded no. If the board found the submission of the appeal was untimely that would warrant any appeals.

R. Turner – noted the issue of whether the objectants could show economic harm due to the shed's construction. D. Mac Donald - noted that any argument as to standing and the merits is for a hearing on a later date, if warranted

Ms. Linson noted no there are two standards of timeliness, a different standard applies to each argument, but if they are not timely, they don't have authority to change .

Ms. Peehl – stated the Village Code 134-30 complaint of violation, doesn't have any timeliness issue on it. Mr. Gaba - noted that is the alternate argument and the board understood that. D. Mac Donald noted the case will be heard in a two-step process.

Mr. Gaba – you can't really bifurcate a public hearing without consent of all parties. You can't rule until you close the public hearing. You can close the public hearing in regards to this issue and leave it open in regards to the other issue so you can do it in steps as long as everybody consents to that. Mr. Gaba instructed the Board not to take any more information on the timeliness issue. It must feel like a motion to dismiss, and if everybody is okay with that, then that is fine. If they are not okay with that then the appropriate thing to do is adjourn the public hearing or go forth to a later date and hear the rest of the case and then render one decision on the case.

D. Mac Donald agreed with bifurcating, closing the public hearing on the timeliness issue, and then deciding that issue alone. Whichever way that issue is decided the decision goes either it's over or continue. Mr. Gaba agreed.

Mr. Norgaard - noted he is not really okay with that and he was under the impression from the last meeting that everything would be done tonight. If possible he would like to see the public hearing continued and could not see why the Board could not adjourn for a few minutes and vote on timeliness and comeback in to pursue the rest. J. Martin - noted it will take more than a few minutes to decide the timeliness issue. There is going to be research involved. Mr. Norgaard - noted okay whatever. D. Mac Donald added that we all make plans but and it gets more complicated than we think. Mr. Norgaard - noted he would be in favor of doing everything tonight including the merits.

Ms. Linson - noted her and her clients were happy closing or adjourning agreed with doing whatever was most convenient for the Board. Mr. Linson, requested if adjourn and reconvene would like additional information to be submitted. In advance of coming tonight they submitted everything in the timeline requested but did not receive everything that Mr. Lusardi raised and would be grateful to receive that and a copy of the stop work order.

G. Gunder – noted that just the timeliness is a lot to deal with right now.

J. Martin - noted that it could obviate everything.

Mr. Norgaard - noted he can come back but it is inconvenient.

D. Mac Donald - noted they will close the public hearing tonight on the timeliness issue the board will meet, make a decision on that and if they find the applicants are timely the public hearing for the other issues is still open.

Mr. Gaba - noted that he will brief the board on the legal arguments that were raised. He will prepare two draft resolutions, one in favor and one against the timeliness issue. They will be circulated at the next meeting of the board. They will be circulated; If the board decides it's untimely it will be very short because the Board will say we made a decision the application is being dismissed, as moved. And then there will be a very short application dismissing the merits as moved because you found it untimely so the board will do both if it is the Boards pleasure the resolution and the adjourned public hearing on the merits or it could go on for hours depending on how the Board decides them.

D. Mac Donald - noted Mr. Gaba is going to prepare the argument for and against and then the Board will make a decision. All Board members agreed and D. Mac Donald asked all parties if they were in agreement with that.

Ms. Peehl noted she had one more thing before adjourning regarding the 60 day conversation. What Mr. Norgaard brought up about how the board works in the village, how they protect other villagers and setup guidelines for builders, when Mr. Henderson actually said to him the HDRB was making him keep those walls in place but that made her feel more confident that he had to rebuild it under the law, just like she had to go before the board for her back windows and couldn't make them bigger. They had to be the same size and it was her way of assuring that the shed was going to be the same size.

D. Mac Donald - noted it was a conclusion that she drew. Mr. Henderson didn't say that.

Ms. Peehl - noted Mr. Henderson told her it would go a lot faster if they could just put up the walls and didn't have to have these old walls in place. But the HDRB was making him keep the old walls up. She thought of course you have to rebuild the walls. Mr. Henderson - noted he never said the HDRB was making him keep the walls up. It was the building inspector.

R. Turner - read the original building permit as follows: "Please be advised if you demolish the existing structure completely you must receive a variance from the Zoning Board of Appeals". That is from the building department.

D. Mac Donald - asked Mr. Henderson if he got that instruction. He answered he did. J. martin - noted that argument will go under the merit section of the hearing.

D. Mac Donald - proposed to the board to close the public hearing on timeliness issue and adjourn the issue on the merits.

R. Turner moved to close the public hearing on the issue of timeliness and J. Martin seconded the motion. The motion was approved 5-0.

The meeting was adjourned at 9:13 P.M.

Executive session started about 9:17 P.M. and lasted about an hour.

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Donald Mac Donald, Zoning Board of Appeals Chairman

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Date

